

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REBECCA FILTHAUT,

Plaintiff,

v.

Case No. 15-cv-12872

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

AT&T MIDWEST DISABILITY BENEFIT
PLAN and AT&T UMBRELLA BENEFIT
PLAN No. 3,

UNITED STATES MAGISTRATE JUDGE
MONA K. MAJZOUB

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE
ADMINISTRATIVE RECORD [20] AND DENYING PLAINTIFF'S MOTION FOR
ATTORNEY FEES [28]**

In this Employee Retirement Income Security Act action, the Plaintiff Rebecca Filthaut asserted three claims. *See* Dkt. No. 4. This Court on November 8, 2016 issued judgment in favor of the Defendant on Claim I. *See* Dkt. Nos. 26, 27. The Court entered judgment in Plaintiff's favor on Claims II and III, however. *See* Dkt. Nos. 26, 27.

Then, on December 7, 2016, the Plaintiff filed a Motion for Attorney Fees, and the Defendant appealed this Court's decision regarding Claims II and III to the Sixth Circuit. *See* Dkt. Nos. 28, 29. The Court deferred a ruling on Plaintiff's Motion for Attorney Fees pending the outcome on appeal. Dkt. No. 36.

The Sixth Circuit has decided the appeal and has reversed this Court's judgment for Filthaut on Claims II and III. *Filthaut v. AT&T Midwest Disability Benefit Plan*, No. 16-2707, 2017 WL 4511487, at *8 (Oct. 10, 2017). Thus, the Defendant is entitled to judgment on Plaintiff's Claims II and III.

The Sixth Circuit's holding also compels the Court to deny Plaintiff's Motion for Attorney Fees [28]. Plaintiff requests attorney fees under 29 U.S.C. § 1132(g)(1), and "a fees claimant must show 'some degree of success on the merits' before a court may award attorney's fees under [this section]." *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 255 (2010) (quoting *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 694 (1983)). Plaintiff cannot make this showing because the Sixth Circuit found that the Defendant prevailed on Claims II and III. Therefore, Filthaut is not entitled to attorney's fees.

Accordingly, the Court will enter judgment in favor of the Defendant on Plaintiff's Claims II and III [20], and the Court will DENY Plaintiff's Motion for Attorney Fees [28].

IT IS SO ORDERED.

Dated: February 21, 2018

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
February 21, 2018, by electronic and/or ordinary mail.

/s/ Tanya Bankston

Deputy Clerk